PAYABLE IN ADVANCE. eign Subscribers 80.05 in Advance

A. T. ATKINSON. ROBERT CRIEVE. Office, Gazette Beelding, Merchand St. (up stairs, Supreme Court of the Hawaiiar Islands-In Banco. In Equity. July Term 1885.

M. S. GRINDAUN AND M. LOUISSON COMPRIS-ING THE FIRM OF M. S. GRINBAUM & CO. VS. THE HEETA SUGAR PLANTATION CO., C. M. COOKE, H. MACPARLANE & CO. AND ALEX-ANDRE KENNEDY.

IN BE THE CLAIM OF J. FOWLER & Co. Before Inid L. J. McCally and Prestm J. J. Opin The bill in this case was filed on July 3rd,

S81: and sets forth:

is on petitioners. We question the contract.

The transaction as alleged is a mortgage, not a
sale. (Fosdick vs. Car. Co., 99 U. S. 256.)

1891, and sets forth:

That on the 19th of August, 1893, the Resia
Sugar Plantation Co., a corporation established under the laws of the State of California and doing business at Koolau, Island of Oabu, and the confined to exact cases. We do not deep authority of cases so far as they go. of the defendants executed and delivered to this was not a bailment because there was the plaintiffs a mortgage deed of all the property belonging to and forming said Hesia Sugar waiver is an act done or allowed not to be done Flustation, and all other property that might thereafter be added to and constitute and form said plantation, to secure the repayment of 820,000 in three years from the date thereof, with interest at nine per cent per annum, payable semi-annually, being for money advanced to the prejudic of another. There is no sufficient evidence to support claim. As to properly that this \$200,000 in three years from the date thereof, with interest at nine per cent per annum, payable semi-annually, being for money advanced to be done to b by said plaintiffs for the purpose of continuing is the law governing the case? second, whether and carrying on said plantation, and that \$60, 800 and more had been advanced and were satisfy us that the sale was a conditional one

said McKeague and Kennedy to the defendants of hearing the evidence and of seeing the wit-H. Macfarlane & Co., third a mortgage from said McKeague to said Kennedy:

of hearing the evidence and of seeing the wit-nesses, we have only the written testimony before us, which has perhaps lost some of its said McKengue and Kennedy to the ediendants of hearing the evidence and of seeing the witH. MacKengue to said Kennedy:

That said mortgage from McKengue to Kennedy was collusive and fraudulent and void for wast of consideration, intended and calcu-

lated to defrand subsequent creditors advanc-ing moneys for carrying on said plantation, and ought not to stand as a valid security

the evidence is such as to leave even a favor-able doubt upon the effect of such testimony. Neisser says he was business manager from

against the mortgage of the plaintiffs:

That at the date of the execution of said mortgage by said McKeague, and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague, the H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague and Kennedy to H. Macforlane & Co., said McKeague & Co., said McK nedy were partners and plaintiffs were ignorable whether said partnership had been dissolved, and avers in substance that Kennedy the railroad was to be considered as the pro-

is absent and that one S. M. Damen was his alterney in fact:

That said morigage from McKeague and Kennedy to H. Macfarlane & Co. was made to secure the dout due from McKeague and Kennedy to H. Macfarlane & Co. was made to secure the dout due from McKeague and Kennedy to H. Macfarlane & Co. was made to delivered. There was no written agreement nedy to said Macfarlane & Co., and for moneys | about it and no definite time set for paymen advanced to thom, and the plaintiffs submit that said morigage was a valid security only for the moneys advanced by said H. Maefarlane was in San Francisco at the time the locons & Co. to said McKengue and Kennedy.

The bill contains further allegations respecting a lease comprised in the mortgage to H.

tive was taken to the plantation. It must have come over in October or November. I dont know that McKengue made the bargain

ng a lease comprised in the mortgage to H. Mactariane & Co. not necessary to be repeated here, and prayed for an account to be taken of amount due to plaintiffs and decree for payment: That en default equity of redemption be foreclosed. That all said outstanding mortinguages he marshalled and an account taken of what was done upon each. That the norticing what was done upon each. That the mortgage from McKeague to Kennedy be declared fraudulent and void against plaintiffs. That said mortgage to H. Macfarlane & Co. was a valid scentrity only to the extent of the moneys advanced by said H. Macfarlane & Co. to said McKeague and he more said to wanced by said H. Macfarlane & Co. to said McKeague and ferwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague in the first place and afterwards by me. McKeague and him. I did not imform Grinbaum & Co.

McKeague and Kennedy: And for general relief.

The bill was amended by making G. W.
Macfarlane & Co. defendants, to whom the
mortgage to H. Macfarlane & Co. had been
transferred, and also J. McKeague.

A receiver had been appointed in other proceedings.

The defendants, G. W. Macfarlane & Co.,
Kennedy and Cooke answered, and the bill
was taken are confess as against the Heeia

was taken pro confesso as against the Heeia when order for railroad was given. R. H. Sugar Plantation Co.

Sogar Plantation Co.

The case came on for hearing before the Chancellor, on 12th and 13th December, 1884, who on the 25th March, 1885, made his decree corporated, before transactions with Neisser. whereby he directed that the mortgage to the 1st was about a year before the road was de Phinniffs, and the several mortgages to H. livered some time before that—from six months Hackfeld & Co., and H. Macfarlane & Co., be to a year—(delivery commenced October 1882, foreclosed, and all the property described in McKeague wanted railroad—was not quite the three several mortgages be sold at public certain whether it would work any auction, free from incumbrances, and the pro-ceeds applied first in repayment of the amount found to be due upon an accounting before the master, upon the mortgage to H. Hackfeld & Co.; second, to the repayment of the amount found to be due on a like accounting, upon the found to be due on a like accounting, upon the mortgage to H. Macfarlane & Co.; third, to the repayment of the amount found to be due upon the mortgage to the plaintiffs; fourth, the balance if any, to be paid into Court to await the Court's disposition of same: That said mortgage to H. Macfarlane & Co. be a security cars and locomotive to be sent out afterwards.

mortgage to H. Macfarlane & Co. be a security up to \$40,000 and interest, and that the mortgage to Konnedy and notes given therewith were void and of no effect.

The plaintiffs and defendant Kennedy appealed, and the decree was sustained by the Court sitting in hance at the last April Term.

The mortgage to plaintiff comprised "all railways railway locomotives, tracks, cars and locomotive to be sent out afterwards. It was mostly a permanent track. They got we were agents for McKesque plantation at the time. First delivery was about latter part of 1852. This is a correct account of what was sent over. Neisser was in charge of plantation—told him I would like something on account. I suppose he understood the road was to be Fowler's until paid for. I saked him and he said be understood it so. He gave me \$6000 on account. I suppose if ing a part of said Heeis Sugar Plantation."

On the 23rd April, 1885, a petition was filed on behalf of Robert Fowler, David Greig and it hadn't worked it would have been Fowler's

Barnard Fowler, of Leeds, England, co-part-ners in lusiness, under the firm name of John Fowler & Co, stating:

livered—the agency was changed. We thought

Fowler & Co., stating:

That they were the owners of certain rails, tracks, portable railroad, cars, rolling stock and other railroad appurtenances, then situated and being upon the Heeis Plantation according to a description thereof, filed therewith:

That said railroad cars and appurtenance were then in the possession of the Receiver appointed by the Court in the said suit and the railroad cars and spiritenance where the control of the railroad cars and spiritenance were then in the possession of the Receiver appointed by the Court in the said suit and the railroad has not all occa delivered—the agency was changed. We thought we have here of all occa delivered—the agency was changed. We thought we have here of the committee of the committee of the control of the railroad has not all occa delivered—the agency was changed. We thought we have the hought to have more payment, so we held not locomotives, rails and cars. The locomotives, rails and cars. The locomotives rails and cars and payments as promised. On cross-examination he says: The conversation with Neisser about road beautiful to have more payment, so we held to to locomotives, rails and cars. The locomotives rails and cars. The locomoti

appointed by the Court in the said suit and then and now pending:
That said railroad was originally ordered by said McKeague, when he was the manager and part owner of the said plantation: That before the arrival of said railroad, said McKeague sold said plantation to the Heeis Sugar Plantation to That all of the property set it was along in 1882 shortly after the affair Reague sold said plantation to the Hoeia Sugar Plantation Co.; That all of the property set forth in said schoolale (accept a certain amount of track not delivered) was delivered to said Ploras Sugar Plantation Co., between the month of November, 1882, and October, 1883, upon the vector agreement and contract, that the title to said railroad should not pass to said the vector agreement and contract, that the battle to the same was paid for, but the title to the same was paid for, but the title to the same should remain in that it title to the same should remain in persuance of said agreement, said plustation Co., on the 20th November, 1882, and to petitioners six thousand dollier. 1882, and to petitioners six thousand dollier.

pesitioners. That in parsuance of said agreement, said plantation Cd., on the 20th Novemiver, 1882, raid to pelitioners in thousand dollar, and Infect of fee any more of account of
said railroad, and, petitioners in consequence
of said failure, requised to deliver a certain
of said failure, requised to deliver a certain
of said railroad, and, petitioners in consequence
a mile of portable track, and then held posa mile of portable track, and the said plaintiffs,
(Grinbaum & Ce.) well knew the above facts
at the time of taking their mortgoge and promisorder by for anid railroad if the same were
laboured to make the provided to be easy about it—
it would be settled after the crop came off. As
were making advances, that was the best they
could do. I went to Hecia with Fowler and
McKeague – Fowler said is would guarantee
read if his engineer built it.

Captain John Ross says: Have been manager of Heeis Plantation from November 1882
till February 1st 1881. Neisser employed me
—objected to Neisser as to direction of line—
be answered I must got along as best I could
as road was inid out by Fowler & Ce's engineer and was to be in their hands until tested and paid for. Was present at conversation between Neisser and Henry Macfarlane.

I heard if the road was out a success it was
to revert to Fowler & Ce's ensigner and was to be in their hands until tested and paid for. Was present at conversation between Neisser and Henry Macfarlane.

I heard if the road was out a success it was
to revert to Fowler & Ce's engineer and was to be in their thore they do
and Neisser) wanted us to be any and as Grinbaum & Co.

We also the railroad out of the railroad in the railroad in the railroad in the r

the period.

The period of the property at the period of the soil and claimed, were hitures affixed to the soil and thereby vested in and formed part of the secutive putting a railroad on Heefa plantation. They

thereby vested to and formed part of the security of said several mortgages.

End. Because said several mortgages other
that said Grinbaum & Co., are not shown in
the retition to have known or acquiesced in
any of the alleged agreements mentioned, and
therefore are not affected or bound thereby,

The security of said several mortgages other
the retition to have known or acquiesced in
the retition to have a cquiesced in
the retition to have a cq

and any of the alleged agreements mentioned, and therefore are not affected or bound thereby, and:

Brd, Because if said Grinbaum & Co. had laim to said railroad property under the harmonic target in said motion thay had the right avorum. It is said motion thay had the right avorum. Lat said other mortgages should exto insist their activity against the same. It was agreed that road was to be put down by Fowler's engineer, expense of engineer to be paid partly by Fowler and part by plantation and after road was paid for it was to pass over to the plantation. This arrangement was arrived at because we could not undertake to guarantee the account as agents of the plantation and the law, and a decree was signed, whereby

"It is ordered, adjudged and cacred, that the railroad areas, only ingered to the railroad track, cars, material and 2-post the railroad track, cars, material and 2-post the railroad americal to said motion, except six schedule amered to said motion, except six schedule americal to said motion, except six schedule americal to said motion, except six schedule americal to said motion thay on the business of the plantation and the law, arranged set went to be plat down, payments, etc., were to be left to my brother Henry nod Noisser. It was agreed that road was been bust on be paid for it was to pass over to the plantation. This arrangement was arrived at because we could not undertake to guarantee the account as agents of the plantation and was signed, whereby

"It is ordered, adjudged and cacreed, that the matter of putting road down, payments, etc., were to be left to my brother Henry nod Noisser. It was agreed that road was to be put down by Fowler's engineer, expense of engineer to be paid for it was to pass over to the plantation. This arrangement was arrived at because we could not undertake to guarantee the account as agents of the plantation and was accept in the office and was not the patch of the plantation. This arrangement was arrived at because we could not undertake to guarantee the acc

F. M. Hatch for politioners.

The sale was a conditional sale, no property
passed

"Whiten by agreement of parties the property
does not vest in purchaser until the purchase
money is paid, the vandor may, if money is

To say the loast according to the cridence.

Death of General Grant

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THE AGENT FOR THE BUILDIN

GENT of Bremen Board of Underwrite Agent of Vienna Board of Underwrite Agent of Vienna Board of Underwrite

VOL. XX.--No. 32.

HONOLULU, WEDNESDAY, AUGUST 12, 1885.

not paid, recover the property from the vendee of the twe Macfarlanes, it was a very loose and or from one who holds it under a mortgage or sale from him." Benner vs. Puffer, 114 Mass. 376, Copyill vs. Hartford and N. H. K. R., 3 Gray 545, Zeethagaa vs. Reterts, 109 Mass. 55, and cited many other cases and authorities writing passed between the parties. Accordvolved property to the amount of nearly thirty thousand dollars and could not have been completed within a year. Yet nothing in writing passed between the parties. Accord-ing to the evidence on behalf of the claimants, the railroad was to be taken back if not a suc-No. 107 King Street, Hone 53, and cited many other cases and authorities to the same effect, and contended that the evidence fully supported the decree.

A. S. Hartwell for the Receiver and Grin
Neisser's evidence should be looked at with JOHN NOTT. cale, Horse Furnishing Goods, Crockery, Glass a China Ware, Practical Mechanics, Honolule, H. L.

The burden of proof of the alleged contract great caution. Grinbaum & Co. had commenoed proceedings for foreclosure, a receiver had been appointed and Neisser was ousted from the management, and he does not fix any definite dates and cannot remember from who he first heard that the property was to remain Fowler's until paid for. Henry Macfarlane says that the matter was

first spoken of about a year before delivery commenced, or about six or eight months before incorporation. Now the conveyance from McKeague to Neisser was on the 30th June 1882, so that it would appear that this

cause he says that the conversation with Ne-isser was just before he left for England in 1882, he does not fix the time, but from enquir-ies made and from official sources within reach, it is ascertained he left on the 26th estisfy us that the sale was a conditional one them owing to plaintiffs from said Heeia Sugar Pfantation Co, under said mortgage.

That S1600 due to the plaintiffs for six months interest or said mortgage on the 16th February, 1884, and not been paid:

That said mortgage was executed and purported to be subject to three mortgages, first from J. McKeague and Alexander Kennedy to H. Hackfeld & Co, dated September 30th, 1872, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and by H. Hackfeld & Co, assigned to P. Isenberg, and the date of the cases cited for the petitioners we should feel bound if the evidence should be positive and certain in its details as to the conversation stated to have taken place in Scl. Isenberg, and without naving that we should go as far as some of the cases cited for the petitioners, and without naving that we should go as far as some of the cases cited for the petitioners, and without naving that we should go as far as some of the cases cited for the petitioners, and without naving that we should go as far as some of the cases cited for the with McKeague and Alexander Kennedy to the defendant of the cases of the cases of the cases of the case of the case of the cases of the case of the case of the c

And now we come to a part of his testimony which satisfies us that neither his nor Henry Macfarlane's testimony is reliable. He says "It was arranged between Henry Fowler and myself in England that the matter of putting flown the road, payments, etc., were to be left to my brother Henry and Neisser, and after road was paid for, it was to pass over to the plantation. Fowler who was out here and his uncle in London agreed to this arrange-ment." Now as G. Macfarlane left at the date mentioned, delivery must have commenced before this arrangement was made in England, and it was made by the Fowlers with their own agent who was not in a position to

ruarantee the account. Neisser's conduct in concealing from his agents Grinbaum & Co., the alleged contract, although they were advancing sixty thousand dollars and carrying on the plantation, does prevent us from giving much credence to his And all Kinds Plumbing Goods.

Again G. W. Macfarlane says that the railand was not included in their mortgage becanse it was Fowler's property and had not passed to the Hecia Plantation. This has been offered as lending to induce the Court to support the alleged contract, where as it has in entirely opposite effect with us, as the nortgage was given in July 1881 long before any negotiation was had respecting the rail-road and consequently it could not have been included in their mortgage. It is an instance of loose and reckless statements being made

without consideration.

Feeling as we do that this claim has not been proved, and that to allow it, would be contrary to public policy and injurious to the rights of third parties, we have come to the conclusion that the decree appealed from should be reversed and the petition and motion dismissed, with costs in this Court and in the Court below. tion dismissed, with costs in this Court and in the Court below. F. L. Hatch for petitioners; A. S. Hartwell

Aliiolani Hale, 29th July 1885. Business Cards. BISHOP & CO.

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